



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 17, 2003

Ms. Patricia E. Carls
Brown & Carls, L.L.P.
106 East 6th Street, Suite 550
Austin, Texas 78701

OR2003-7440

Dear Ms. Carls:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193203.

The Georgetown Police Department (the "department") received multiple requests for all information relating to a specific incident involving the Williamson County Sheriff. You state that the requested information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section incorporates the doctrine of common-law privacy. Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that the information at issue here relates to the suspected criminal behavior of a public employee. Consequently, the public has a legitimate public interest in the disclosure of this information. See generally Open Records Decision No. 484 (1987) (public's interest in knowing how police departments

¹The department also asserted that the requested information is excepted under section 552.108(a)(2) of the Government Code. The department has, however, withdrawn its arguments under that exception.

resolve complaints against police officer ordinarily outweighs officer's privacy interest), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former Gov't Code § 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy). Accordingly, none of the requested information is excepted from disclosure under section 552.101 in conjunction with the doctrine of common-law privacy.

You also claim that the images of the three peace officers contained on the submitted videotape are protected from disclosure under section 552.119(a). Section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that are not relevant in this instance. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). We note that in Open Records Decision 502 (1988), this office held that there need not be a threshold determination that release of a photograph would endanger an officer before the statutory predecessor to section 552.119(a) could be invoked. Consequently, we stated that unless an officer has given his written consent to release, a department must withhold that officer's photographic image from public disclosure under section 552.119. In Open Records Decision No. 536 (1989), this office once again opined on the protections of section 552.119. In that opinion, we concluded that the protections of section 552.119 did not apply to the photographs of deceased officers. We reasoned that the exception was inapplicable because its purpose was to protect peace officers from life-threatening harassment. Protecting the photographs of deceased officers would not serve this purpose.

The submitted videotape contains the images of three peace officers. You indicate that one of the officers has given written consent to the disclosure of his image. The other two officers have not consented to release. We note, however, that it is impossible to identify the two officers from this videotape. Since the faces of the officers are not revealed, we cannot presume that the release of these images will subject the officers to life-threatening harassment. Thus, in accordance with our holding in Open Records Decision No. 536, we conclude that the videotape must be released in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

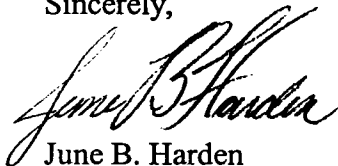
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 193203

Enc: Submitted information

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